



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on **March 4, 2004**

**NOTICE OF ACTION TAKEN -- DOCKET OST 2004-17125**

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This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **COMAIR, INC.,** filed **2/13/04** for:

**XX** Exemption for two years under 49 U.S.C. §40109 to provide the following service:

**Scheduled foreign air transportation of persons, property, and mail between Atlanta, Georgia, and Monterrey, Mexico, and to combine this exemption authority with Comair's existing certificate and exemption authority, consistent with applicable international agreements. Comair, a wholly-owned subsidiary of Delta Air Lines, Inc. (Delta), states that it will operate under the "DL" code as a "Delta Connection" carrier.**

**XX** Statement of Authorization for Comair, Inc., for indefinite duration under Part 212 of the Department's Regulations to:

**Display the "AM" designator code of Aerovias de Mexico, S.A., de C.V. (Aeromexico) on flights operated by Comair between Atlanta, Georgia, and Monterrey, Mexico.<sup>1</sup>**

Applicant reps: **Robert E. Cohn (Comair) (202) 663-8060** DOT Analyst: **Linda Lundell (202) 366-2336**

**DISPOSITION**

**XX** **Granted (subject to conditions, see below)**

The above action granting new exemption authority to Comair was effective when taken: **March 4, 2004,** through **March 4, 2006**.

The above action granting a statement of authorization to Comair was effective when taken: **March 4, 2004,** and will remain in effect indefinitely, subject to the conditions below.

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

**XX** **The authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

**XX** **Comair's certificates of public convenience and necessity**

**XX** **Standard Exemption Conditions (attached)**

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**Conditions:** The U.S.-Mexico exemption authority granted to Comair is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. Consistent with our policy, the dormancy notice period will begin May 1, 2004, Comair's proposed start-up date for these services.

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<sup>1</sup> Aeromexico already holds exemption authority to conduct scheduled combination service in the Atlanta-Monterrey market (see Notice of Action Taken dated September 23, 2003, in Docket OST-2001-10369).

The route integration authority granted to Comair is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority granted should be construed as conferring upon Comair rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Comair notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights); (b) should there be a request by any carrier to use the limited-entry route rights that are included in Comair's authority by virtue of the route integration exemption granted here, but that are not then being used by Comair, the holding of such authority by route integration will not be considered as providing any preference for Comair in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

The Statement of Authorization granted Comair is subject to the following conditions:

- (a) The statement of authorization will remain in effect only as long as Comair and Aeromexico continue to hold the underlying authority to operate the code-share services at issue, and the code-share agreement providing for the code-share operations remains in effect.
- (b) Comair and/or Aeromexico must promptly notify the Department (Office of International Aviation) if the code-share agreement is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services.<sup>2</sup> (Such notice should be filed in Docket OST-2004-17125).
- (c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected; and
- (d) The authority granted here is specifically conditioned so that neither Comair nor Aeromexico shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

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On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the application was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:*  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)

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<sup>2</sup> We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

## **APPENDIX**

### **U.S. Carrier Standard Exemption Conditions**

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

8/2003